

**SUPREME COURT MINUTES
TUESDAY, OCTOBER 2, 2007
SAN FRANCISCO, CALIFORNIA**

S156728 H032084 Sixth Appellate District

**CARRIGAN (RICHARD) v. S.C.
(SOLETRON CORPORATION)**

Petition for review and application for stay denied.

S149752 C047617/C048799 Third Appellate District

**ROBY (CHARLENE J.) v.
MCKESSON HBOC**

Extension of time granted.

On application of respondent and good cause appearing, it is ordered that the time to serve and file the respondent's opening brief on the merits is extended to October 2, 2007. It is further ordered that Appellants McKesson and Schoener's answer brief on the merits is extended to January 25, 2008.

**SUPREME COURT MINUTES
TUESDAY, OCTOBER 2, 2007
SPECIAL SESSION—SANTA ROSA, CALIFORNIA**

The Supreme Court of California convened for hearing at its Special Session at the Sonoma Country Day School, 4400 Day School Place, Santa Rosa, California, on October 2, 2007 at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Kennard, Baxter, Werdegarr, Chin, Moreno, and Corrigan.

Officers present: Frederick K. Ohlrich, Clerk, and Jeff Whaley, Senior Deputy Clerk.

S144753 Fashion Valley Mall LLC, Petitioner,
 v.
 National Labor Relations Board, Respondent.
Cause called. W. McLin Lines, argued for Petitioner.
Thomas J. Leanse, argued for Amici Curiae International Council of
Shopping Centers et al.
David A. Rosenfeld, argued for Intervener.
Mr. Lines replied.
Cause submitted.

S123808 Zerlene Rico et al., Plaintiffs and Appellants,
 v.
 Mitsubishi Motors Corporation et al., Defendants and Respondents.
Cause called. Norman Pine, argued for Appellants.
James J. Yukevich, argued for Respondents.
Mr. Pine replied.
Cause submitted.

Court recessed until 1:30 p.m. this date.

Court reconvened pursuant to recess.

Members of the court and officers present as first shown.

S049973

The People, Respondent,

v.

Douglas Oliver Kelly, Appellant.

Cause called. Evan Young, Office of the State Public Defender, argued for Appellant.

Stephanie Brenan, Office of the Attorney General, argued for Respondent.

Mr. Young replied.

Cause submitted.

Chief Justice Ronald M. George and Justice Kathryn M. Werdegar, not participating in consideration of the following case, did not take the bench.

The Honorable Robert M. Mallano, Associate Justice, Court of Appeal, Second District, Division One, and the Honorable Nora M. Manella, Associate Justice, Court of Appeal, Second District, Division Four, sitting on the following case under assignment by the Chairperson of the Judicial Council, joined the Court at the bench.

S134873

Hebrew Academy of San Francisco et al., Plaintiffs and Appellants,

v.

Richard N. Goldman et al., Defendants and Respondents.

Cause called. Michael C. Cooper, argued for Respondents.

Jeremy B. Rosen, argued for Amici Curiae Aeonix Publishing Group et al.

Paul Kleven, argued for Appellants.

Mr. Cooper replied.

Cause submitted.

Justice Mallano and Justice Manella, not participating in the following matter, did not join the bench. The Court is rejoined at the bench by Chief Justice George and Justice Werdegar. All other members of the Court and officers were present as before shown.

S067678 The People, Respondent,
 v.
 Martin Mendoza, Appellant.
Cause called. Marianne D. Bachers, Office of the State Public Defender,
argued for Appellant.
Adrianne S. Denault, Office of the Attorney General, argued for
Respondent.
Ms. Bachers replied.
Cause submitted.

Court adjourned.

**SUPREME COURT MINUTES
TUESDAY, OCTOBER 2, 2007
SPECIAL SESSION – SANTA ROSA, CALIFORNIA**

The Supreme Court of California convened for a special session at the Sonoma Country Day School, 4400 Day School Place, Santa Rosa, California, on Tuesday, October 2, 2007, at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Kennard, Baxter, Werdegarr, Chin, Moreno, and Corrigan.

Officers present: Frederick K. Ohlrich, Clerk, and Jeff Whaley, Senior Deputy Clerk.

THE CLERK: I'm Fritz Ohlrich. I'm the Clerk of the California Supreme Court. I'd like to welcome you to the Sonoma Country Day School and the court's seventh annual Special Outreach Program. Last year we were in Santa Barbara. The year before that in Redding. It's a pleasure to be here in Sonoma.

In a few minutes we're going to begin the proceedings this morning. The first thing that will happen is everyone will get to watch a video entitled "Inside the Supreme Court," and it's both an historic and operational video about the history of the California Supreme Court, and a little information about how the Supreme Court operates and handles cases, how cases come to the court.

And then at the end of the video, there's also a short piece introducing you to each of the seven justices of the California Supreme Court.

About 9:00 o'clock, the court will enter. They will be seated in seniority order, with the Chief Justice of California, Ronald George, seated in the center. Chief Justice George has been Chief Justice now for more than 10 years, one of only four Chief Justices in the court's 150-year history to obtain that distinction, having served for more than 10 years. He's the 27th Chief Justice.

To his left, as we look at the bench, will be Justice Joyce Kennard, and she is the senior justice on the court, and she was appointed in 1989. To the Chief's right, Justice Marvin Baxter, next in seniority. Then back to this side, Justice Kathryn Werdegarr. Back to the other side, Justice Ming Chin. Back to this side, Justice Carlos Moreno. And on the far end, Justice Carol Corrigan, the newest and 112th justice to have served on the court in 157 years.

I happen to be the 25th clerk to serve the court. I guess clerks last longer than justices.

The Chief Justice will make some welcoming remarks. He will then call on Presiding Judge Boyd and Headmaster Nix for some welcoming remarks from them, and then he will make a few more remarks. And then we will have the question and answer period. Can I see where the students are? You're all just kind of scattered around. If we can get the students that are going to ask the questions, maybe come up somewhere over there. There were some students that should know who they are. Very good. Thank you.

(Video entitled Inside the Supreme Court shown.)

THE CLERK: I just want to make sure, do we have everyone in the auditorium? If we do, if we could have some of the students in the back couple of rows come up here and fill in these seats up here, I think that would be helpful and even over there. And on the far side. Thank you. We'll just take a moment to shuffle that around. All right.

CHIEF JUSTICE GEORGE: Good morning. I'm very pleased to welcome you to the special session of the California Supreme Court being held here today and tomorrow.

I would like to begin by introducing my colleagues on the bench: To my immediate right is Justice Joyce Kennard; to her right, Justice Kathryn Werdegar; and to her right is Justice Carlos Moreno. To my immediate left is Justice Marvin Baxter; to his left, Justice Ming Chin; and to his left is Justice Carol Corrigan.

I also would like to present this court's very able Clerk/Administrator, Fritz Ohlrich, who, as is true in so many different areas, has been of great help to the court in setting up this session.

Also present are our California Administrative Office of the Courts, Director, William Vickrey, his deputy, Ron Overholt, and the AOC's regional director, Christine Patton.

I would now like to call upon Robert S. Boyd, the Presiding Judge of the Superior Court of Sonoma County, who has played a major role in the conception and implementation of this special outreach program here in Santa Rosa.

Judge Boyd has been on the bench since 1998 and is in his third year as presiding judge. He serves on the Executive Committee of the Judicial Council's Trial Court Presiding Judges Advisory Committee and has served on other committees that advise the Judicial Council and the California Judges Association. Under his leadership, information for this program has been developed and made available—on the Sonoma Superior Court Web site—to local schools and to the public at large.

Presiding Judge Boyd.

JUDGE BOYD: Thank you and good morning. It is my great honor to welcome all the justices of the California Supreme Court to this historic and exciting session of the court. We thank you for your interest and willingness to travel to our county and provide an opportunity for many of our high school students and other citizens to watch cases of importance be argued.

Most people have a vague awareness that our government has the judicial appellate process, but few citizens really understand and appreciate it. Here, with the help of the judges and attorneys who have visited in classrooms providing information to help our students better understand this process, I believe our citizens will walk away with a new appreciation of how our system works and a better respect for its results.

If I could address the audience for a minute, I trust many of you in the audience will find this process interesting and exciting, and perhaps be motivated to seek a career in law. One of you could someday find yourself sitting up on the stage as a member of the Supreme Court offering your contribution to the development of our laws.

All of us gain immeasurably from this court's continuing interest and investment in providing for the community's education in the important role played by the judicial branch, a vital and coequal branch of government.

Thank you for promoting and improving access to justice and ensuring the fairness of the judicial process. Thank you for your willingness to travel to our county and to provide this valuable educational experience for all our citizens. Thank you very much.

CHIEF JUSTICE GEORGE: Thank you, Presiding Judge Boyd. Next I would like to introduce Phillip C. Nix, founding headmaster of Sonoma Country Day School.

MR. NIX: Good morning.

CHIEF JUSTICE GEORGE: Before I even let you speak, I want to say something about you, Mr. Nix. I want to express the court's appreciation for your gracious agreement to host this session of the court at the school's facility, and I note that your school will next year celebrate, I believe, its 25th anniversary. Mr. Nix has been instrumental in creating a school with an excellent reputation for the quality of the instruction it provides, as recognized in the numerous awards the school has received. Mr. Nix himself has been nationally honored for his educational leadership, and has served on both the President's Committee on the Arts and the Humanities, and on the Art Education Panel of the National Endowment for the Arts. Thank you, Mr. Nix, and we'd love to hear from you.

MR. NIX: Thank you. It is the greatest of honors to have you here, justices. As an educator, the thing that thrills me most about this program is I work with children who eventually become adults. I'd like to say I'm not interested in children, I'm interested in the adults they'll become. But this extraordinary program that you've given them gives them access to the fact that the ideals of our culture, justice and democracy, and participation, are embodied in real human beings in real time who take on that service with their individual and particular lives.

For you to come to our county, for you to take this program throughout the state, is an extraordinary gift and inspiration to the young people who have to take on the burdens of government and take on the burdens of citizenship as they go forward. They can also see the joy of it by having seen people in actual practice. I'm greatly honored that you are here, and I greatly honor the contribution you have made to the education of young people in this state. Thank you so much.

CHIEF JUSTICE GEORGE: Thank you, Mr. Nix. Before I turn to the substance of my remarks, I would like to take a moment to acknowledge the presence here today of someone who is a great friend of the courts and of education, as well as a personal friend. The Honorable Shirley Hufstedler is here to see what is happening at her grandchild's school.

She served in the California judicial system in Los Angeles as a superior court judge, and then as a justice of the Court of Appeal before being appointed by the President to the United States Court of Appeals for the Ninth Circuit in 1968. She served on that court for 11 years before being appointed the very first Secretary of Education by President Jimmy Carter. After serving in that position for two years, she returned to the practice of law in Los Angeles with her husband, Seth Hufstedler. With her today is her daughter-in-law, Ms. Lannie Medina. Would you please stand as well. Thank you for joining us, both of you. And now let me turn to today's special proceedings. Like my colleagues, I am very pleased to return to Sonoma County, having spent many pleasant weekends exploring the area and its attractions. But I made my first official visit to Sonoma in April of 1997, soon after becoming Chief Justice of California. Upon assuming that office, I had made a commitment to visit the courts in each of California's 58 counties to acquire up-to-date knowledge of the problems confronting our trial courts, and the manner in which the courts were meeting those challenges.

That initial visit to Sonoma was just over 10 years ago, but our judicial system has undergone tremendous changes since then. Trial courts were funded primarily by the county in which they were located. Many courts increasingly faced fiscal emergencies and shortfalls. Services for the public varied greatly from court to court, and courts were threatened with the prospect of substantial employee layoffs. We now have a state-funded trial court system capable of planning for the future and of ensuring that justice can be administered almost equally throughout the state.

The trial courts at the time of that earlier visit here were divided into two levels—municipal and superior. Today they are combined into a unified superior court. We went from 220 trial courts around the state to 58, one in each county, in that period of time, with greater flexibility in the use of all resources.

In 1997, the courts were seeing the beginning of the trend toward more self-represented litigants. Now, in most areas, at least 80 percent of the litigants in family law matters do not have counsel. Our branch has responded with a variety of resources to assist these individuals in making full, effective, and appropriate use of the courts.

Our court system's consistent focus is on improving the administration of justice. Our goals include providing meaningful access to the courts for all individuals, and ensuring that the courts that they turn to will be independent and impartial.

I was distressed to learn that a recent poll showed that fewer than two out of three adult Americans could name the three branches of government. I'm confident that every student in the audience here today immediately recalls these branches as the executive, the legislative, and the judicial.

The judicial branch is essential to the balance of power created by the founders of our nation and our state—and it has a very special and crucial role. Unlike the other branches, the courts are created to operate based not on partisan, political, or public pressures or preferences, but according to the rule of law. At times, that may mean protecting unpopular causes or individuals—not because the judge or court rendering the decision may agree with the cause or the views of the individual—but because the law requires that such protection be provided.

Nonetheless, our court system is well aware that in order to administer justice effectively for all Californians, we must be open and responsive to appropriate community needs and interests. Thus, we have worked to provide improved interpreter services, created plain-language jury instructions, established self-help centers in courthouses and community centers, and implemented a court Web site that offers quick entry into the court system and available resources in multiple languages.

To be effective, courts know that we must have the trust and confidence of those we serve, individuals like yourselves. We have made outreach to the community a fundamental part of how courts operate so that we may improve our services with our existing resources—while seeking to augment those resources—and also encourage public understanding of the role of the courts as impartial adjudicators of disputes.

Sessions such as today's are intended to further these objectives. Each year our court regularly rotates oral argument among the three locations: San Francisco (where we maintain our headquarters), Sacramento, and Los Angeles. This is the seventh year in which we have ventured beyond those three sites to hold sessions in communities throughout our state.

These trips also provide an opportunity to learn more about the history of the area in which we will be sitting. I particularly enjoy finding historic connections between our court and the community where our special session is being held. I therefore was pleased to discover that at least two of our predecessors as Supreme Court justices had substantial connections with Sonoma County. Jackson Temple, the 24th justice of the court, was from the east, but he came west to join his brothers to engage in ranching in Cotati. A year later, he began practice as a lawyer in Petaluma and then Santa Rosa. He served on the Supreme Court on three occasions: first, from 1870 to 1872; again, from 1886 to 1889; and, for a final period, from 1895 to 1902. His service extended over 32 years of the 157-year history of our court.

In between stints on the Supreme Court, he sat for eight years as a trial judge riding circuit in Marin, Sonoma, and Mendocino Counties, practiced law in San Francisco, and was placed in nomination for a United States Supreme Court position by the Prohibition Party in 1882, a contest he lost quite soundly. I understand he is buried in the municipal cemetery in Sonoma.

The 62d justice to serve on the Supreme Court, Emmet Seawell, was born in Yountville, but his family moved to Santa Rosa when he was still a boy. He left school at the age of 15 years, and worked first as a printer, and then as a journalist. Deciding he wished to become a lawyer, he obtained a college degree and then took up the study of law with a lawyer in Santa Rosa. Seawell was in private practice until his election as district attorney in 1892, only two years after his admission to the bar. I can assure the students here today that it takes a little longer than that these days to get to that position. He served for eight years, returned to private practice, and was elected to the superior court bench in 1902, serving on that court for 20 years. Justice Seawell was elected to the Supreme Court in a hotly contested election in 1922 and was elected for a second term, again in a very contested election, in 1934. At that time, challengers could file for Supreme Court seats, and although the elections nominally were nonpartisan, political parties often backed the candidates. These campaigns were often strident, to say the least.

Interestingly, it also was in that year, 1934, that the voters adopted a new method of judicial selection for the California Supreme Court and the Courts of Appeal, which included appointment by the Governor, vetting of judicial qualifications by a panel, and a retention vote—that's a yes or no vote by the electorate—a system fairly close to what we have here today.

Sonoma County thus has had a long association with the California Supreme Court, and we are pleased to convene here today at the Sonoma Country Day School in a space sufficiently large to comfortably accommodate a substantial number of spectators.

I will add that in fact one of the present members of the court, Justice Werdegar, has a childhood connection to Sonoma County, having attended the Sotoyome School in Healdsburg where 30 students in grades one through eight were instructed in a one-classroom school by one teacher. Justice Werdegar recalls being skipped from the first to the second grade because there weren't enough students to justify a first grade. And her educational career took off from there. So we have past and present connections to Sonoma County on this court.

We do anticipate with regard to the sessions today and tomorrow, that approximately 1,500 students from more than 22 public and private schools will attend our two-day session. Written briefs and materials summarizing the cases on our oral argument calendar are posted on the Supreme Court's and the Sonoma court's Web sites—including a study guide to assist the almost 100 local judges and attorneys who have volunteered to work with students here and in classrooms, to explain the legal issues involved in these cases, as well as the role and function of the California Supreme Court.

Under the leadership of Sonoma County Superior Court Judge Elaine M. Rushing, chair of the planning committee for this event, judges, many individuals—Sonoma's court executive, court administrators and staff, local bar leaders, and representatives of the local educational community—have worked hard to provide engaging and informative learning experiences for the students.

These court proceedings will be broadcast live by the California Channel so that many others outside this auditorium may see the court at work. The California Channel has been a committed partner in each of the California Supreme Court's special sessions that we have held outside our traditional venues, and we are very grateful for the great public service they are performing.

Our goal is to stimulate community interest and knowledge of our judicial and legal system. There is much more to our system of justice than one would imagine from the way it is depicted in the entertainment media. A strong and independent judiciary and its corollary—adherence to the rule of law—are the cornerstones of our democracy and serve to protect us from an intrusive or oppressive government.

The success of this special court session is made possible only through the efforts and cooperation of the judges and staff of the Sonoma County Superior Court and the local bar association. Similarly, the contributions and participation of the local schools and their interest in incorporating these proceedings into their curriculum have been truly gratifying.

The members of our court hope that today's oral arguments will have significance far beyond the direct participants. We believe these court sessions will provide a valuable and insightful learning experience—not only for local students but statewide for members of the public who will observe the telecast of these proceedings of the Supreme Court when they are rebroadcast statewide by the California Channel.

We expect that this special session will stir the interest of the students here today and of others watching electronically in understanding more about our legal system and the rule of law that protects us all. Perhaps one day, as has been said earlier in these proceedings, some of the students listening attentively will be in our seats, or sitting at the counsel table ready to present crucial arguments that will help shape the future of the law. I certainly hope so.

Once again, on behalf of the California Supreme Court I want to indicate how pleased we are to be here today and to express our great appreciation to all who have made this program possible. This experience demonstrates once again that the courts, the bar, educators, and the community at large, working together, can achieve extraordinary objectives that benefit us all.

The court will now entertain questions from students present in the courtroom before later proceeding with argument in the first case. We'll hear the first question at this time.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Kristin Lytle, and I am from Ursuline High School. I would like to ask how does the Supreme Court choose which cases to review, and why are the cases in which the death penalty has been imposed treated as automatic appeals?

CHIEF JUSTICE GEORGE: The background basically is that we have the largest judicial system probably anywhere in the world, with about 1,650 judges and 450 subordinate judicial officers, commissioners, who render decisions and those, in turn, can be appealed as a matter of right to any one of our six Courts of Appeal—the state is divided geographically into six districts—and that's the end of the line for most of the cases.

We sit around a conference table every Wednesday when we're not hearing oral arguments, and we vote on as many as 200 or 300 petitions seeking review. That totals pretty close to about 10,000 a year, and we cannot take up every case that may, in our preliminary view, be incorrectly decided.

Our function is not to review for error. That's why we have the Courts of Appeal. Our function is to help shape the case law of the state, to provide precedent, to guide lower courts and lawyers and the public at large. So under our rules, we look for cases that involve a substantial question of statewide importance, or a conflict in the way one Court of Appeal has rendered a decision on a legal issue and another Court of Appeal decision on the same point in another case. And sometimes both factors exist, that it's a substantial question of statewide importance and there's a conflict.

And then we will take up the case to provide guidance. And even then, it may not be the ideal case. It may be an unusual set of facts, or maybe a required objection wasn't made. So if it's

the right case, we will take it up and resolve that conflict or decide that issue if we think there needs to be a decision from our court. So that's why and how we decide which cases to review.

Now, the drafters of the California Constitution felt that because the matter of a sentence of death is so important, that that issue should not go to the Courts of Appeal. It should go directly to the California Supreme Court, bypassing the Court of Appeal. And those cases are therefore called automatic appeals, because even if the defendant chooses not to want to appeal, there is an automatic appeal. The case comes up directly to us, and those cases involve, of course, very different types of issues and very long transcripts, typically about 10,000 pages, sometimes many, many times more than that.

So that is basically the source for the cases that we render a decision on, after having the case studied and briefed and ready for oral argument. Thank you for your question, Kristin.

STUDENT: Thank you.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Deanna Digitale. I am from Montgomery High School, and I would like to ask, why did you decide to become a judge, and how did you arrive at the position of Supreme Court justice?

CHIEF JUSTICE GEORGE: Justice Kennard will respond to your question.

JUSTICE KENNARD: Deanna, you sure know how to ask tough questions, and there are two parts to the questions. Dealing with your first part, roughly 25 years ago when I was working for a justice on the Court of Appeal as a research attorney, he decided to retire, and I decided to apply for a position on the trial bench as a way of continuing public service, but in a different setting. Eventually, Governor George Deukmejian did appoint me to the trial bench. After one year on the municipal court, the governor elevated me to the superior court; the year after that, to the Court of Appeal; and, the following year, 1989, to the California Supreme Court.

The second part of your question I think wants to know how I rose to the position of Supreme Court justice. Chief, can I pass on that question?

CHIEF JUSTICE GEORGE: I think there's too much interest that's been shown to have you avoid that question.

JUSTICE KENNARD: Early on, during a Supreme Court vacancy, I think there were four male judges and a woman judge who had put in their names. I was not one of them.

One day as I was discussing a case with a colleague of mine on the Court of Appeal in Los Angeles, he told me that, in his words, he'd been getting some calls from people up north who

inquired about me with respect to the Supreme Court vacancy. My colleague then asked me, “So, Joyce, are you going to apply?” And I blurted out “Good heavens, no. That would be the height of arrogance. I just got to the Court of Appeal.”

Well, several days later I got a call from the Governor’s appointment secretary, and he suggested that I put my name in for the vacancy. Naturally, I was very grateful, very honored to have received the call. And then I asked the legal appointments secretary, “Would it be all right if I give you my answer tomorrow?” I think there was a wee bit of a pause on the other line. But he graciously told me, “Yes, that would be fine.”

I immediately shared the news with my secretary and my two research attorneys to whom I was close, and all three told me, “Well, of course, you go for it.” And that evening when I got home, I told my husband, and he, too, encouraged me to apply. I never thought I stood a chance whatsoever, but as you know, I did get the post. Naturally, I’m very grateful to Governor Deukmejian.

And, as an emigrant who came here at age 20, I feel that my success could have happened only in America. I never felt that America owed me anything. To the contrary, I’ve always felt indebted to this country simply for letting me in.

America gave me a chance to get a good education. When I came here, I barely had an education. America gave me a chance to succeed against all odds. America taught me that the boundaries of achievement are set largely by the individual. This land still offers many opportunities. My message to you and all of the students here is grab those opportunities.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you, Justice Kennard.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Stephanie Acetuno, and I am from Cloverdale High School. I would like to ask, have there ever been cases where you felt you had to vote one way as a justice and where that vote was contrary to your personal beliefs, opinions, or moral values? If so, how did that affect you?

CHIEF JUSTICE GEORGE: Justice Baxter will respond to your question.

JUSTICE BAXTER: Thank you, Stephanie, for that question. The simple answer is yes. And like everyone else, judges do have their personal beliefs, their opinions, and their values, but under our system of separation of powers, a judge’s primary duty, which, of course, he or she swears to fulfill, is to apply the law, not to make the law. So a judge may sometimes be required to apply a law with which he or she doesn’t personally agree. But judges understand this obligation from the

outset, and they know that when they take their oaths of office, that they may not always be able to vote or decide the way they would personally prefer. But they understand why it is so important that we have a government of laws, not of men, and I might add, or women.

They also realize they are not the persons who were elected by the voters to make the laws. Our system does give judges a limited authority to say what the law is. To decide cases, courts sometimes must interpret the Constitution, the statutes, or the government regulations. And there is also a tradition of what is called the common law, certain areas in the law that are not covered by the Constitution, by the statutes, or the regulations, where courts may and must make the rules. And in these areas, a judge's personal perspective may rightfully influence how he or she decides a close case. But even here, the judge is not free to decide any way he or she wishes. The decision must be principled. It must be honest, fair, and legally sound. And in most cases, the judge's decision is subject to review by a higher court, to make sure that it meets those standards. Thank you.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you, Justice Baxter.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is James Bordin. I am from Sonoma Country Day School, and I would like to ask, what is the kind of education and experience you need to be qualified to serve as a justice of the California Supreme Court?

CHIEF JUSTICE GEORGE: Justice Werdegar will respond to your question.

JUSTICE WERDEGAR: Thank you, James. As the Chief Justice mentioned, in my case I started at Sotoyome School in Healdsburg, a one-room school with eight grades and one teacher. But that's not required. And as he also mentioned, there was also an early Justice Seawell who did not go to law school but studied law and became ultimately a justice. However, more typically, you go to law school and you have to pass the State Bar examination, which is a three-day examination, and you have to have been in the practice of law for at least five years before you are eligible.

Most justices who arrive at the Supreme Court have been in practice a great many more years than that, 20 years. And if you were able to watch the video that was presented before we entered, you will see that the backgrounds are various, and I think we all benefit from the members of the court having diverse backgrounds in legal experience and in life. So a justice can come from government service, private practice, or the academy, law school, but the wider the experience a particular individual has in the law, the better it is for deciding the difficult issues that come our way. Thank you.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you. Thank you, Justice Werdegarr. We now have the next question.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Leah Kahn. I am from El Molino High School, and I would like to ask, what has been the most interesting or difficult case that you have worked on in the California Supreme Court?

CHIEF JUSTICE GEORGE: Justice Chin will respond to your question.

JUSTICE CHIN: Leah, that is a very good but tough question. By the way, in case you haven't noticed, we are answering your questions in order of seniority. We do everything in order of seniority.

That is a tough question, and if you ask any of my colleagues, I'm sure you would get a very different answer. It's tough because every judge in California has to make tough decisions every day. One case, for me, stands out. It's called *Agua Caliente Band of Indians v. Superior Court*.

The case questioned whether or not the Fair Political Practices Commission could sue the Indian tribe for its alleged failure to comply with strict reporting requirements for campaign contributions. The case involved many difficult issues, including the tribe's sovereign immunity, the federal Constitution, as well as the state's rights to enforce its political process. It was interesting to trace the historical development of sovereign immunity in this country. In the end, both sides made terrific arguments, and we had to make a very difficult decision that would affect our electoral process throughout the state. The Fair Political Practices Commission eventually prevailed in the decision, but the tribe eventually settled the case, and I believe that settlement will benefit all sides in the future. But thank you for your excellent question.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you, and thank you, Justice Chin.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Hannah Harding, and I'm from Windsor High School. I would like to ask why are there major differences in the rights conferred by the federal and California Constitutions, and are there differences concerning freedom of speech?

CHIEF JUSTICE GEORGE: Justice Moreno will respond to your question.

JUSTICE MORENO: Thank you, Chief. Hannah, that's an excellent question, the answer to which might elude many legal scholars and certainly most of the public.

But under our federal system, states retain the ability to pass laws that don't conflict or interfere with the federal laws, so in the 19th century when the California Constitution was first written, California, like many other states, came up with their own constitutional rights to protect individuals against the power of state and local government.

The people who framed our California Constitution in 1879 had a different historical perspective, different concerns than the people who enacted the Bill of Rights almost 100 years earlier. And that's reflected in the fact that the California constitutional provisions are often worded differently, sometimes significantly differently from their federal counterparts.

Our courts have sometimes interpreted these state constitutional provisions even more protective of individual rights, such as free speech, than the United States Constitution. The state can give individuals more and different protections for individual rights than the United States Constitution, but it can't give individuals fewer or less protection than the United States Constitution.

Now one reason for the difference in the Constitutions is that the California Constitution is much easier to amend than the United States Constitution. In fact, it's a much longer, more complex document.

In California, the Constitution can be amended through the initiative process by a majority vote, a super majority vote of the electorate, and it's much harder, of course, to amend the United States Constitution. As a result, there have only been about 27 amendments to the United States Constitution in 220 years, but many, many more amendments to the California Constitution—some of them adding new rights like the right to privacy, which is express in the California Constitution and perhaps only implicit in the United States Constitution. The right of crime victims to restitution is in our Constitution, as is the right of reporters to not have to reveal their sources, and even the right to fish on public lands is embedded in our California Constitution. And all of these rights significantly stand independent from and separate from rights that we have under our federal Constitution. So thank you for that question.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you, and thank you, Justice Moreno.

STUDENT: Good morning. Mr. Chief Justice and associate justices of the Supreme Court, my name is Tim Derner, and I'm from Cardinal Neuman High School. My question to you this morning is, what is the impact of the public media and public opinion on decisions made by the California Supreme Court?

CHIEF JUSTICE GEORGE: Justice Corrigan will respond to your question.

JUSTICE CORRIGAN: Tim, in case you missed the movie, you now know who the youngest member of the court is. And that's a terrific question. When we assume these jobs, it's because we've derived our authority from the people, so the law doesn't belong to us. It belongs to all of us. And when we decide a case, it's important that we explain, not only what we decided but why we decided it that way. In that way, we discharge our obligation to have people understand the legal system that they entrust to us.

But when we decide a case, we don't take a poll. There are very clear rules about how we're supposed to approach deciding a case, and we look, first of all, to what the people have said about what they want the law to be, what their legislators have said on their behalf, or what they may have said in the course of passing an initiative to the Constitution, to amend the Constitution. So it's the language of the law that we look to first.

Then we look to how a given case fits into the overall structure of the law, how a given question relates to other related issues in the law.

And, finally, we look to precedent decided in previous cases to figure out what all of that body of authority tells us should be the outcome in a given case. And as you heard from Justice Baxter, there's some interpretation that goes on there, but the rules are really very clearly set out for everybody. An important part of our job is not only to call the balls and strikes and to explain who wins, but why the case has come out in a certain way. And in that way, we also help guide the future of the law so that the precedent, the reasons for the outcome, is clear. And if people can understand why we're doing what we're doing, in theory anyway, they're supposed to have greater confidence in the fairness of the approach that we've taken. So thanks for your question.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you, and thank you, Justice Corrigan.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Sabrina Wu, and I am from Maria Carrillo High School. I would like to ask how is it that the federal appellate court for the District of Columbia Circuit asked the California Supreme Court to decide the legal question presented in the first case the court is hearing this morning?

CHIEF JUSTICE GEORGE: By way of background, about 95 percent of the cases that are filed in the nation's courts are filed in state courts. Sometimes the focus is on the federal courts, but most of the work is done in state courts.

There are federal court proceedings that even though they may involve a very substantial question of federal law, that the federal courts are best suited to respond to or to answer, that may

also involve a question of state law, depending upon, of course, which state the controversy arose out of.

And federal courts do not have the final word on issues of state law, and they always look to the state courts to decide how those state law issues are decided, in deciding the overall case that's before them that will involve federal issues. And sometimes there's no clear-cut answer in the case law, or at least the parties or the court think that there is not. And in those situations, there's a procedure that most states have adopted, and California adopted it—actually it was sort of a latecomer—only several years ago, and that is responding to a question that's certified from a federal court.

So, in other words, if a federal court has a case before it—and we in California will only answer questions from the federal appellate or circuit courts or the highest court of another state if they have a question involving California law and they don't believe that they can tell what the state courts have really decided on that question of state law, they will certify a question to us, basically saying, it would really help us out if you, the state's highest court of California, would rule on this issue of state law, and then we will apply what you ruled to be the case in deciding this overall federal case.

So that's how it came to be that the first case here has a question that came to us, not through the normal process of appeal from a superior court in the state up to a state Court of Appeal, up to us, but rather came by way of a certified question from the District of Columbia circuit of the federal court system.

And then once we give our answer, which will be in the form of an opinion like the opinions we render in any of our regular state cases, the federal court, the circuit court for the District of Columbia, will take that as the final word on the question of state law and then will apply that in deciding the other issues before it in its proceeding.

STUDENT: Thank you.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Adhish Yajnik, and I'm from Montgomery High School. I would like to ask what has been the most rewarding experience you've had while serving on the California Supreme Court?

CHIEF JUSTICE GEORGE: Again, proceeding in order of seniority, that question will go to Justice Kennard.

JUSTICE KENNARD: Thank you, Chief Justice George. During my nearly 20 years of tenure on this court I've had many rewarding experiences such as seeing a number of my dissenting opinions favorably influence the California Legislature or, as happened recently, seeing two of my dissents get embraced by the United States Supreme Court.

On another level, my tenure on this court has been greatly enriched by the close friendships I have formed with law students who have been my interns.

Apart from legal training, I try to instill in my interns an appreciation for the importance of professional integrity, the importance of treating people with respect and dignity irrespective of rank, the importance of commitment and the importance of having a heart. In addition, the importance of always giving one's very best to the task at hand. And I tell them not to give up on their ideals, their dreams. And I share with them some favorite lines from a poem by Langston Hughes, "Hold Fast to Dreams": "For if dreams die, life is a broken-winged bird that cannot fly." Adhish, I hope that you, too, will pursue your dreams.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you, and thank you, Justice Kennard.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Jessee McEuin, and I am from Cloverdale High School. And I would like to ask, why does it take so long for a case to reach the California Supreme Court from the lower courts, especially death penalty cases?

CHIEF JUSTICE GEORGE: Justice Baxter will respond to your question.

JUSTICE BAXTER: Thank you, Jessee. In nondeath cases, where the death penalty is not involved, the case does not come to the California Supreme Court until there has been a trial at the trial court level, the superior court, and the matter has been appealed to the intermediate appellate court. So the procedures involved at the trial and the appeal must necessarily be fair and thorough. So the California Supreme Court does not get involved until after those courts have issued their rulings.

Death penalty cases are entirely different. In a death penalty case, once the judgment of death has been imposed at the trial court level, the appeal comes directly to the California Supreme Court, bypassing the Court of Appeal.

Usually the defendant has no money to hire a lawyer, and the court must find and appoint and pay for a lawyer for the defendant. And this is a major challenge to the court, because it can take a considerable amount of time to find a well-qualified lawyer willing and able to handle the case, and nothing can happen in the appeal until the lawyer has been appointed.

Also, the trials in death penalty cases tend to be very long and complicated, and again, this is to make sure that the trial is a fair trial. And as a result, it typically takes a long time to prepare the written record of the trial which is what the court reviews on appeal.

There are often disagreements about what the written record should contain or include. And these problems also cause further delays. But after the record is completed, the lawyers must examine it. Then they write extensive briefs which oftentimes run hundreds of pages in length.

And, finally, in addition to the automatic appeal, the defendant is entitled to file petitions for habeas corpus which can cause the case to continue long after the appeal itself is decided.

There is an old saying “that justice delayed is justice denied.” And certainly, family members of murder victims often share that view and rightfully so. But the challenge to the court is to provide a fair trial and a fair appeal before the ultimate penalty is imposed. Thank you for your question.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you, and thank you, Justice Baxter.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Sophie Hoover. I am from Windsor High School. And I would like to ask, would you describe how the California Supreme Court goes about deciding a case once it has been granted review?

CHIEF JUSTICE GEORGE: Justice Werdegarr will respond to your question.

JUSTICE WERDEGAR: Thank you, Sophie, for that question. Once we grant review, the Chief Justice assigns the case to one of the members of the court that voted to grant review. That justice then confers with her staff, and with the assistance of her staff, prepares an extensive memorandum that discusses the issues and the applicable law and puts forth a proposed result. These memoranda can run from 35 to 125 pages. That product is then circulated among the other members of the court, the other six justices.

Each justice has to read it, evaluate it, and put in writing whether they agree, or they agree with reservations, or they’re doubtful, or they disagree, and they have to say why.

Once the circulated memorandum has at least four votes—that’s a majority of our seven—the Chief calendars it for oral argument, so the cases that will be argued this session have been through that process. And by the time we come to the bench we are all well acquainted with what the issues are and where each of us stands.

After oral argument, we withdraw and we conference, and the Chief assesses whether we stay where we were before. Does the author still have at least a total of four votes? Sometimes the

votes have changed and the author does not have the majority, in which case the Chief gives that author the opportunity to go with the new majority or to give up the case and he reassigns it. And then the author would write a dissent. But when all that has been resolved, the justice who is going to be the author of the opinion writes the opinion and circulates it. Any dissents that are going to be written are then written.

When everybody has signed one or the other of the opinions, the case is filed for the public to see, and that has to occur within three months after the date of oral argument.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you. Thank you, Justice Werdegar.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Rebecca Whitley, and I am from Maria Carillo High School. I would like to ask, how can the justice system best guard against conviction of an innocent person?

CHIEF JUSTICE GEORGE: Thank you for your question, and Justice Chin will respond to it.

JUSTICE CHIN: Thank you, Mr. Chief Justice. Rebecca, thank you for your interesting question. It's also a tough question but any human institution will, by its very nature, not be perfect. I believe that our justice system does its very best to ensure that these kinds of miscarriages of justice do not occur.

Of course, the first responsibility for that lies with the district attorney, and his or her responsibility is to ensure that only meritorious cases are brought to the court. I see the former district attorney of San Francisco in the audience. I had the pleasure of meeting the district attorney of Sonoma last night, and I'm sure they, like all the district attorneys across the state, will agree with me that that is a prime responsibility of the prosecutor.

The best safeguard, after the case is filed, is to ensure that all of those who are charged with a crime receive a fair and impartial trial; that their rights are zealously safeguarded; and that they are represented by competent defense counsel. Once all of that is in place, hopefully, we will only get convictions of those who are indeed guilty of the crime.

But one additional element that we have in our arsenal now is the new DNA technology. DNA can be used not only to convict but to exonerate, and that has happened in many cases throughout the country.

We must never let our guard down in the judicial system to make sure that only those who are guilty are convicted. I think our justice system does its very best, even though we are human, to do that. And when you think about it, there are thousands of convictions every year throughout the state. I believe that most of them are warranted, but we can never let our guard down to ensure that innocent people are not convicted of crimes. Thank you for your question.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you, and thank you, Justice Chin.

STUDENT: Good morning, Mr. Chief Justice and associate justices of the Supreme Court. My name is Alicia Armstrong Sanchez, and I am from Sonoma Valley High School. And I'd like to ask, what do the courts do to make sure that people with very little money receive a fair trial in criminal and civil cases?

CHIEF JUSTICE GEORGE: Thank you for your question, and Justice Moreno will respond to it.

JUSTICE MORENO: Thank you, Chief, and thank you, Alicia. That's an excellent question. One of the fundamental principles of our justice system is to provide equal justice for all. I think we can all acknowledge that we don't have a perfect system, but we have one that I think adequately provides for a fair trial for everyone, those accused of crimes and also those seeking some kind of relief through our civil courts.

In criminal cases, we do have a right to have free counsel in any matter that is punishable by imprisonment. That doesn't mean that you're entitled to have an attorney free of charge, for example, for minor traffic offenses.

I would commend to everyone a book entitled *Gideon's Trumpet* that details how this right came about some 40 years ago or so—probably longer than that—in a case entitled *Gideon v. Wainwright* that established the right to free counsel in criminal cases.

In civil cases, there is no right to have an attorney appointed free of charge. But the court has recognized that many of the cases that are on their face civil in nature do implicate some fundamental rights. The example I can think of are dependency cases in which the rights of parents and children are involved, particularly in terms of parental rights being terminated, so that parents and children and other parties do have a right to appointed counsel in those types of cases.

For those who don't have an attorney, the courts recently have also attempted to provide information free of charge to attorneys and to civil litigants through various self-help centers that are located, I think, in most of the trial courts throughout the state.

There's also a Web site that has been established by our judicial branch that provides just loads of information, again free of charge, concerning the court procedures, legal rights, legal forms for those who need them, and so forth. And much of this information is available in other languages such as Spanish and some other languages as well.

Also, in the trial courts, many courts now have facilitators. Many of them have a background in the area of family law. There's also a staff, some of them who are student volunteers through a justice corps program that staffs various courts throughout the state. And these individuals are able to provide some type of information, not necessarily legal advice, but at least can help people navigate the legal system by providing forms and instructions, and so forth, so the court is trying to make access to justice more available in an effort to make equal justice available for all. Thank you.

CHIEF JUSTICE GEORGE: Thank you, and thank you, Justice Moreno. And now our last question.

STUDENT: Mr. Chief Justice and associate justices of the Supreme Court, my name is Aleta Pierce. I am from El Molino High School, and I would like to ask what is the reason judges wear a black robe in the courtroom?

CHIEF JUSTICE GEORGE: Justice Corrigan.

JUSTICE CORRIGAN: They give me all the tough ones because I'm new. Really, the simple answer is that it's a symbol of our office, and so like lots of other people who have responsible jobs—your doctor has a white coat and the priest has fancy vestments, and we have a black robe. But more specifically, everybody who comes to court has a right to have their case decided based on the rule of law and under the precedent and not based on the individual opinion of the judge who happens to be there that day. So just as Justice Baxter explained, we don't just show up and decide a case because we think it ought to come out that way. There are very specific rules that we follow.

And when we put on our robe, it's to remind us of our very important responsibility, and it's to assure everybody else that they're going to be in front of that impartial arbiter that was described by the Chief Justice who's going to rule, not on their own personal views, but on the rules that are established under the body of law.

Now, there's actually a Government Code provision that mandates that when we're doing anything official acting as judges, we have to wear a robe, and the law also provides that the robe has to be black. There are some states where judges get to pick whatever color they want, so the judges have fuchsia robes and turquoise robes. Apparently the Legislature determined that that was a little

too out there, even for California, so they said our robes have to be black. Thanks for your question, Aleta.

STUDENT: Thank you.

CHIEF JUSTICE GEORGE: Thank you for your question. Thank you, Justice Corrigan. I want to collectively thank all of the students who formulated and expressed themselves in these questions so eloquently, with some probing questions that I think cast some very insightful information into the workings of our court system. We really appreciate your participation and the teachers who assisted in this program. The Reporter of Decisions is directed to spread these special proceedings on the minutes of the court so that they will be included in the Official Reports of the decisions of this court.

We will now proceed with the calling of the morning calendar by the Clerk of the court.